SALES — CONDITIONAL SALES — REMEDIES OF SELLER: BREACH OF A COLLATERAL CONTRACT AS DEFENSE TO REPLEVIN. — The seller of a piano under a conditional sale contract agreed that he would use reasonable efforts to sell pianos to those whose names the buyer sent in, and would apply the commissions therefrom on the purchase price. The seller now brings replevin for the piano, and the buyer sets up a breach of this agreement. *Held*, that the seller may recover. *Kohler & Chase* v. *Turner*, 146 Pac. 393 (Wash.).

In a conditional sale a breach of warranty by the seller is, by the weight of authority, no defense to an action of replevin. *Hauss* v. *Savarese*, 87 N. Y. Misc. 330, 149 N. Y. Supp. 938; *People's Electric Ry. Co.* v. *McKeen Motor Car Co.*, 214 Fed. 73. See *contra*, *Guilford, Wood & Co.* v. *McKinley*, 61 Ga. 230, 233. These cases are often explained on the ground that no action for breach of warranty can accrue until title has passed. See *Frye* v. *Milligan*, 10 Ont. 509. In substance, however, a conditional sale amounts to an executed sale with a chattel mortgage back. See WILLISTON, SALES, § 326. Thus the sounder explanation is that, as the buyer's right of action neither gives him a lien on the goods, nor prevents him from being in default, it can be no defense to the seller's action to recover possession. *Blair* v. *Johnson & Sons*, 111 Tenn. 111, 76 S. W. 912. But if the seller has himself prevented the performance of the condition, he cannot claim that the buyer is in default. Thus, a tender of payment by the buyer and refusal by the seller will vest title in the buyer and leave the seller to his action for the price. *Ingersoll-Sergeant Drill Co.* v. *Worthington*, 110 Ala. 322, 20 So. 61; *Leflore* v. *Miller*, 64 Miss. 204, 1 So. 99. The situation is analogous if the seller has agreed to let the buyer work out the purchase price, and refuses to give him the work to do. *Ramsey* v. *Capshaw*, 71 Ark. 408, 75 S. W. 479. Hence, when the seller's breach of contract has prevented the buyer from paying in the way agreed upon, the seller should be unable to assert the default in those payments. *Gilbert Co.* v. *Husted*, 50 Wash. 61, 66, 96 Pac. 835, 836; see *Brownfield* v. *Jones Co.*, 98 Ark. 495, 500, 136 S. W. 664, 666. The language of the court in the principal case does not seem in accordance with this view, but the case may be explained on the ground that it did not appear that the buyer was not in default in an amount in excess of that which would have been paid by means of the commissions.

USURY — VALIDITY OF USURIOUS MORTGAGE — RIGHT OF INNOCENT PARTY TO THE MORTGAGE TO FORECLOSE: NEW YORK LAW. — The defendant attempted to evade the New York statute which declares all contracts for usurious loans absolutely void (N. Y. CONSOL. LAWS, GENERAL BUSINESS LAW, INTEREST AND USURY, § 373), by executing a mortgage to a dummy mortgagee, and procuring its discount to the plaintiff at an illegal rate of interest. Though the purchase price, which was paid to an agent, went directly to the mortgagor, the mortgagee was ignorant of the nature of the transaction and supposed that the mortgage was merely assigned to him. *Held*, that he may enforce the mortgage to the extent of the consideration paid. *Schanz* v. *Sotscheck*, 152 N. Y. Supp. 851 (App. Div.)

Though on principle the purchase of an accommodation note, since the indorsee is buying the credit of a third person, is not a loan but a true sale, New York and several other states hold such a transaction usurious if the note is discounted at more than the legal rate of interest. *Claflin* v. *Boorum*, 122 N. Y. 385, 25 N. E. 360; *Whitten* v. *Hayden*, 7 Allen (Mass.) 407; *cf. Eastman* v. *Shaw*, 65 N. Y. 522. *Contra*, *Dickerman* v. *Day*, 31 Ia. 444; *Holmes* v. *State Bank of Duluth*, 53 Minn. 350; *Moore* v. *Baird*, 30 Pa. 138. But the purchase of a mortgage from a dummy mortgagee is distinguishable. Since it is in substance the giving of money to the mortgagor in reliance on his credit alone, it is a true loan, and properly subject to the usury law. Entirely apart from the New York view as to accommodation paper, therefore, the mortgage in the

principal case is absolutely void for usury and no action would lie on the instrument. In the ordinary case arising under the New York statute, it would be contrary to the policy of the statute to allow the lender to recover even his principal, for the contract is expressly made altogether void. But where the lender is an innocent party, as in the principal case, since to refuse recovery would allow the borrower to profit by his own wrong at the expense of one who is entirely innocent, it seems proper to impose a quasi-contractual liability and allow the mortgage to be enforced to this extent. See *Pullman's Palace Car Co.* v. *Central Transportation Co.*, 171 U. S. 138, 152. This, rather than estoppel, seems to be the true basis of the highly just result of the principal case and of other New York decisions in accord. *Payne* v. *Burnham*, 62 N. Y. 69; *Verity* v. *Sternberger*, 62 N. Y. App. Div. 112, 70 N. Y. Supp. 894, aff'd 172 N. Y. 633, 65 N. E. 1123. But where in addition to the representation involved in the mere act of transfer there is an express representation that the instrument is valid, the New York courts, on the ground that the mortgagor is estopped to set up the usury, allow a recovery in full upon the instrument. *Rider* v. *Gallo*, 153 N. Y. App. Div. 334, 137 N. Y. Supp. 1015; *Union Dime Savings Institution* v. *Wilmot*, 94 N. Y. 221; *cf. Hurlbut & Sons* v. *Straub*, 54 W. Va. 303. This seems wrong, since it is not possible to be estopped into liability on an absolutely void contract. See 19 HARV. L. REV. 454.

VESTED, CONTINGENT, AND FUTURE INTERESTS — FUTURE INTERESTS IN PERSONALTY — ACTION FOR DAMAGES TO CHATTEL, BY EXECUTORY LEGATEE AGAINST EXECUTOR OF FIRST HOLDER. — A necklace was bequeathed to A, with remainder to B in the event of A's dying childless. The contingency occurred, and B now sues A's estate to recover for damage done to the necklace by A and for the loss of part of it. *Held*, that B can recover. *In re Swan*, 10 Wkly. Notes 113 (Ch. Div.).

There has been much controversy on the question whether interests in chattels personal are executory or are vested when a corresponding interest in realty would be. See GRAY, RULE AGAINST PERPETUITIES, 3 ed., § 117 *a*; 14 HARV. L. REV. 397. In the principal case, however, that problem is not involved, as the bequest to B after A's absolute estate is on any view executory. See GRAY, RULE AGAINST PERPETUITIES, 3 ed., § 835. In the analogous situation in realty, damage to the property by the first owner is an immediate wrong to the executory devisee. This is shown by the fact that he may at once enjoin waste. *Turner* v. *Wright*, 2 DeG., F. & J. 234. In the case of a contingent remainder, where the prior estate must certainly determine in favor of someone, damages for part waste are also recoverable, but will be impounded for the benefit of whomever later proves to be entitled. *Watson* v. *Wolff-Coldman Realty Co.*, 95 Ark. 18, 128 S. W. 581. But in an executory devise, as the contingency ending the first estate may never arise, no such damages can be given. *Ohio Oil Co.* v. *Doughetee*, 240 Ill. 361, 88 N. E. 818. As soon as the executory devisee comes into possession, however, as he is now ascertained, the objections to allowing him a remedy vanish. A wrong with a suspended remedy is not anomalous; for example, an ultimate remainderman who had no action for waste may sue if the intermediate estate subsequently lapsed. See *Duval* v. *Waters*, 1 Bland (Md.) 569, 573. It is submitted that the same result should be reached in the case of chattels, and as the injury is to property it should survive. See *Jenkins* v. *French*, 58 N. H. 532. The court in the principal case, while correct in decision, was troubled with the survivorship point and avoided it by the questionable discovery of a trust or bailment in the first holder.

WITNESSES — EXAMINATION — CROSS-EXAMINATION TO CREDIT: INTEREST OF WITNESS IN OUTCOME OF SUIT. — In a suit for personal injuries the defendant called as a witness the conductor in charge of the car which had caused the damage. On cross-examination the plaintiff sought to discredit the wit-